

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2019- ____-A

IN RE: Petition of the Office of Regulatory Staff for Rulemaking Proceeding)))	SOUTH CAROLINA OFFICE OF REGULATORY STAFF'S PETITION FOR RULEMAKING
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The South Carolina Office of Regulatory Staff (“ORS”), by filing this Petition for Rulemaking (“Petition”) would respectfully show and request of the Public Service Commission of South Carolina (“Commission”) that:

1. The Commission is a state agency constituted pursuant to the laws of the State of South Carolina with its business offices located in Columbia, South Carolina.

2. Pursuant to S.C. Code Ann. § 58-3-140 (2015), the Commission is “vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State.”

3. This Petition is filed pursuant to S.C. Code Regs. 103-825, which provides that a rulemaking proceeding shall commence by the filing of appropriate pleadings to initiate a formal proceeding. Further, S.C. Code Regs. 103-825(A)(1) recognizes a rulemaking proceeding as an authorized type of formal proceeding that may be held by and before the Commission.

4. ORS is a state agency charged with the duty and responsibility to “represent the public interest of South Carolina before the [C]ommission.” S.C. Code Ann. § 58-4-10 (Supp.

2018). It is also the duty and responsibility of ORS to “make recommendations to the [C]ommission with respect to standards, regulations, practices, or service of any public utility pursuant to the provisions” of Title 58 of the South Carolina Code. S.C. Code Ann. § 58-4-50(7) (Supp. 2018).

5. The promulgation of regulations is governed by the Administrative Procedures Act as found in S.C. Code Ann. §§ 1-23-10, *et seq.* (Supp. 2018).

6. “Regulation” is defined, in part, in the Administrative Procedures Act as “each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency.” S.C. Code Ann. § 1-23-10(4) (2005). The definition further states that “[p]olicy or guidance issued by an agency other than in a regulation does not have the force or effect of law.” *Id.*

7. On November 25, 2019, in a regularly scheduled Commission Business Meeting, Commissioner Ervin addressed an article filed in *The State* newspaper regarding the sale of customer information from one regulated utility to an outside third party, which then proceeded to use that information to attempt to sell insurance by way of mail marketing.¹

8. The use of customer data by an independent third party could cause confusion to utilities’ customers and be misleading.

9. This issue is being addressed in a number of other states.²

¹ See item 14 in the Commission Utilities Agenda, published November 22, 2019, <https://dms.psc.sc.gov/Attachments/Event/107d913d-f856-4efc-88de-60fb62278c96>; See Also article in *The State* Newspaper, “Dominion sold SC customers’ data. Now they’re getting unsolicited insurance offers,” November 22, 2019.

² See Utah Consumer Alert, issued May 2, 2018, in which the Director of the Utah Public Division of Public Utilities announced that utility customers were receiving misleading and confusing mailings and that the Utah Division of Public Utilities was investigating; See Also the Order issued by the North Carolina Utilities Commission in Docket Nos. E-100, Sub 153, 157, and 161, which stated, “[o]n January 16, 2019, the Public Staff filed comments in Docket No. E-100, Sub 157. Among other things, the Public Staff stated that there is a need for a rulemaking to ‘create rules that would provide customers or a third party with customer permission appropriate access to customer data, while protecting customers and their personal and energy consumption data.’ The Public Staff stated that the rulemaking

10. ORS would show unto the Commission that the protection of the public interest requires that the Commission hold a rulemaking proceeding to determine appropriate parameters and standards regarding a utility's use of customer data.

11. In order to protect consumers and the public interest, ORS recommends to the Commission that the regulations regarding a utility's ability to sell customers' data be examined. ORS recommends the Commission consider regulations to apply to all regulated utilities that help prevent the potential for misleading advertisements by prohibiting the sale of customer data by regulated utilities absent a customer's consent.

12. ORS is working on a draft regulation that it believes will address and alleviate this concern and plans to submit its proposal for consideration.

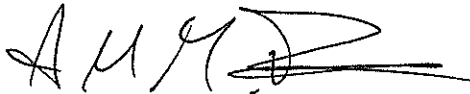
WHEREFORE, ORS respectfully requests that this Commission:

1. Pursuant to the Commission's Regulations and as requested in this Petition, initiate a formal proceeding for the purpose of promulgating a regulation to help prevent the potential for misleading advertisements by prohibiting the sale of customer data by regulated utilities absent a customer's direct consent.

2. Once ORS has submitted its proposal, as soon as practicable thereafter, proceed with the publication of notice of drafting in the State Register as required by S.C. Code Ann. § 1-23-110 (Supp. 2018), and publication of the proposed regulation and notice of opportunity for public hearing and comment as required by S. C. Code Ann. § 1-23-110 (Supp. 2018).

currently underway in Docket No. E-100, Sub 153 could be 'updated to ... establish a definition of 'customer data,' who should have access to that data, how access should be granted, customer data protections, liability for parties who breach the confidentiality of data, and who pays for the access.'" In that case, the North Carolina Utilities Commission opened a separate docket, Docket No. E-100, Sub 161, to initiate a rulemaking regarding customer data issues; *See Also* guidelines for large and small utilities published by the Washington Public Utility Districts Association, https://www.wpuda.org/index.php?option=com_content&view=article&id=153:data-privacy-resources&catid=20:site-content.

3. Provide such other relief that the Commission deems appropriate.



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November 27, 2019
Columbia, South Carolina